

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1265 of 1987

with

CRIMINAL MISC.APPLICATION No 2875 of 1987

with

MISC. CRIMINAL APPLICATION No 1681 OF 1990

with

MISC.CRIMINAL APPLICATION No.3156 OF 1992

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SELF EMPLOYED WOMEN'S ASSOCIATION (SEWA)

Versus

THE COMMISSIONER OF POLICE AHMEDABAD CITY  
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Appearance:

MS RANI ADVANI for Petitioners  
MS AMY YAGNIK for Respondent No. 1 & 2  
MR GN DESAI for Respondent No. 3  
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CORAM : THE ACTING CJ R.A.MEHTA

Date of decision: 10/10/97

ORAL JUDGEMENT

The petitioner, Self Employed Women's Association

(SEWA) has prayed that criminal complaints against its member, petitioner No.2 be quashed and set aside and that no such prosecutions be filed against vegetable vendors covered by the directions of the Supreme Court in Writ petition No.89/82 and quash the prosecutions initiated against vegetable vendors in various complaints registered under sections 102 and 117 of the Bombay Police Act. In the Misc. Criminal Application No.2875 of 1987, prayer is made to quash the warrants of arrests issued against the members of the petitioner-Association. A list of 281 members is annexed with the application. This list of members of the petitioner Association was also before the Supreme Court. A tabular statement showing the vending areas and vendors is annexed to this judgment.

2. It is submitted that the petitioner is a voluntary organization of self-employed women for their welfare. In these petitions, we are concerned with the women vegetable vendors who are members of the petitioner Association and mainly it is in the context of the vegetable vendors sitting in and around the Manek Chowk and other areas of Ahmedabad, where they have been doing their trade since last many years.

3. Writ petition No.89/82 was filed in the Supreme Court and the Supreme Court had directed the Ahmedabad Municipal Corporation not to interfere with the rights of the vegetable vendors in their working and earning their livelihood by vending vegetables in Manek Chowk area and directed the Ahmedabad Municipal Corporation to issue vending licences to the vegetable vendors who are members of the petitioner Association. The Police Commissioner was also restrained from interfering with the trading activities of these vegetable vendors in Manek Chowk and prosecutions were also restrained till the Ahmedabad Municipal Corporation provides them alternative sites. Para 10 of the order of the Supreme Court reads as follows:

"10. Until such time as the 218 female vegetable vendors are shifted to the terrace after the provision of the above mentioned facilities and the remaining space on the terrace is allocated to other vegetable vendors, including the 95 male vegetable vendors mentioned in the list of SEWA all existing interim orders restraining the Municipal Corporation from evicting them and from recovering any penalties imposed on them and also restraining the Commissioner of Police from proceeding with the prosecutions for alleged

violations of the Bombay Police Act will continue to remain operative."

The grievance made in the present petition is that inspite of the aforesaid order of the Supreme Court and also the vending licences issued by the Ahmedabad Municipal Corporation to the vegetable vendors who are members of the petitioner Association, the Police personnel have been harassing and abusing and even physically manhandling and assaulting the poor and humble vegetable vendors. It is, therefore, prayed that the Police Authorities be specifically directed not to persecute and prosecute the vegetable vendors and also quash all the prosecutions pending against them. It is further submitted that even though the High Court has stayed the prosecutions, every year hundreds of criminal complaints are filed against the members of the petitioner Association and they are put to harassment and attendance in courts and loss of earning.

4. In view of the interim order passed in the Misc. Criminal Applications, the prosecutions have not been proceeded with. The petitioner has narrated the pathetic conditions of the vegetable vendors and the harassment by the uniformed public servants. It is very sorry state of affairs. In spite of the fact that these vegetable vendors are protected by the Supreme Court and are lawfully carrying on their business under the licences granted by the Ahmedabad Municipal Corporation, they are made to face so many prosecutions so often and waste their times for running here and there and to the Courts almost every day.

5. In view of the fact that they are carrying on their lawful activities in lawful manner, the prosecutions filed by the Police and the traffic police against the members of the petitioner Association (who are vegetable vendors) are required to be quashed and set aside. The petitioners are unable to furnish a complete list of such thousands of criminal cases against about 525 members of SEWA so as to be incorporated in the order as part of this order. Nonetheless all such criminal cases are hereby quashed and set aside. There are large number of cases and the vegetable vendors being illiterate they would not have a list of the cases, therefore, all the proceedings against the vegetable vendors under the Bombay Police Act are quashed and set aside. A list of vegetable vendors is produced in Misc. Criminal Application No.1681/90 at Annexure 3 and a similar list is produced at Annexure A in Misc. Criminal Application No.2875 of 1987. All the prosecutions filed

against these vegetable vendors under the Bombay Police Act are quashed and set aside and the Police authorities, Municipal authorities and the Criminal Courts are directed to see that this order is given effect to in the cases where list is given and as well as all other cases pending. The Police Authorities are further restrained from filing such prosecutions against these persons. An incomplete list running into a large number of pages is taken on record.

6. It is relevant to note that today there are nearly 525 vendors who are licensed by the AMC or are protected by the orders of the Supreme Court. They are also before us in the Special Criminal Application No.1265 of 1987 and the other Misc.Criminal Applications filed therein. The issue that arises for consideration is as to what happens after these applications are disposed of, by passing orders of quashing the pending cases against these vendors in the various metropolitan courts.

7. It is to be noted that the offences registered against these vendors are for alleged obstruction in a street, under sections 102 and 117 of the Bombay Police Act. The offence is punishable by imposing a fine of upto hundred rupees, the exact amount being totally within the discretion of the Magistrate. In view of the specific complaints/allegations of the petitioner SEWA that the powers under theses are abused by the police, by arbitrarily issuing summons even when no offence is committed, or directly issuing 'Arrest Warrants' without issuing any summons, arbitrarily registering a number of offences against the same vendor and finally imposing any arbitrarily arrived at figure by way of a fine, it is necessary to give some directions in this regard.

8. The AMC shall within a reasonable time, mark the areas by 'Pattas' of 6' x 4' where these vendors can carry their legitimate trade peacefully, which they have been doing in Manekchowk, Danapith, Girdharnagar, Shardaben Hospital, Meghaninagar and Vithalnagar since the last so many years. Only if the vendors cross these marked pattas, can they be prosecuted. At the time of hearing of such cases, SEWA shall be entitled to defend the cases of its vendors who are illiterate and unable to defend themselves. If more than five offences under sections 102 and 117 are registered against the same vendor, the Magistrate shall examine and determine whether the vendor is being victimised by any authority.

9. The vendors face double prosecutions for the same offence of alleged obstruction on streets, by the Traffic Police as well as the Municipal Corporation, that is, they are prosecuted and fined for the same offence at the instance of both these authorities separately. This is unjust and unconstitutional to say the least. The Traffic Police shall be the only authority to prosecute the vendors for these offences. The AMC shall not punish and recover fines nor seize the goods of these vendors for the alleged offence of obstruction of streets.

10. When these matters were heard long back, an attempt was made to have some rethinking about regulation of traffic and making the roads one-way during certain hours and on trial basis. However, that does not seem to have been undertaken. It would be worthwhile even now to experiment and see how it works. It is for the appropriate authorities to consider this position.

11. It should also be noted that SEWA has deposited a sum of Rs.62,600/- (at the rate of Rs.200 for each of its 313 vegetable vendors). The said amount has been lying in the joint account in the name of SEWA and the Municipal Commissioner since 1986. Letter to this effect is at Annexure B to the Misc. Criminal Application. The Supreme Court order in respect of the deposit of Rs.62,200/- is in the order dated 17th December 1986 and the Supreme Court had directed that the "amount will be utilised for the purpose of welfare of these women vegetable vendors in mutual consultation between SEWA and the Corporation". The Municipal Corporation and the SEWA shall work out and see how best this amount can be used for the purpose for which it is meant. The Corporation is therefore, directed to see that this amount with accumulated interest which has been lying in the joint account be put to use for which it is meant expeditiously.

12. The Supreme Court had expressed its happiness to find that the problem of female vegetable vendors in the Manek Chowk Area of the City of Ahmedabad had been resolved in the matter before the Supreme Court. Earlier a joint meeting between Smt. Ela Bhatt and the Municipal Commissioner and the Police Commissioner had made the settlement possible by accommodating women vegetable vendors to carry on their occupation of vending vegetables which they have been doing for the last so many years. The Supreme Court had expressed a sense of appreciation of the positive and helpful attitude adopted by the Municipal authorities in facilitating the solution to the problems of vegetable vendors. The sympathetic

consideration of the authorities was appreciated by the Supreme Court. We wish that the Police Department will also show the same sympathetic and considerate attitude towards these people by following the true spirit of the Supreme Court directions by not resorting to unnecessary prosecutions.

13. Rule is made absolute accordingly by quashing all the prosecutions and restraining filing of similar prosecutions by the Municipal Authorities and by the Police Authorities under the Bombay Police Act against the SEWA vegetable vendors.

Liberty to the petitioner to apply in case of difficulty.

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